



**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

Case ID 1500166358

Erf 397, 3 Van der Stel Way, Kenridge

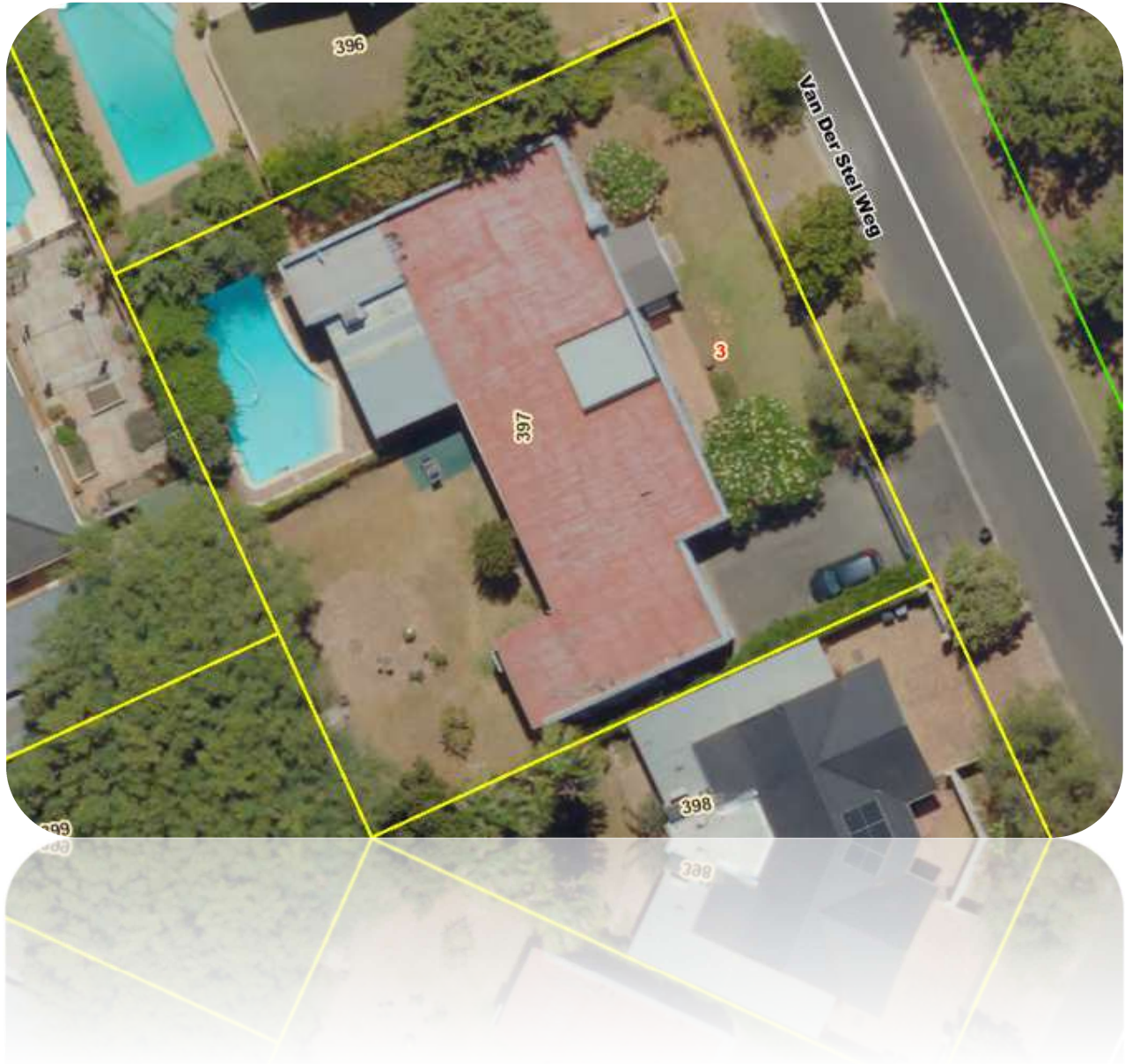
Development Management

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MOTIVATIONAL MEMORANDUM

Application for Permanent departures, Removal of restrictive deed condition & consent to relax a deed condition; Erf 397, Kenridge



Date: June 2026

Ref: Erf397KR/RoRD/APSv1

Pierre Jordaan

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ADDENDA

1. POWER OF ATTORNEY
2. TITLE DEED
3. GENERAL PLAN
4. BONDHOLDER'S CONSENT
5. CONVEYANCE'S CERTIFICATE
6. PROOF OF COMMUNICATION WITH RUYTEPLAATS ESTATES PTY. LTD.
7. RECORD OF PRE- SUBMISSION CONSULTATION
8. APPLICATION FORM

PLANS

1. LOCALITY
2. 2024 APPROVED BUILDING PLAN
3. PLAN OF DEPARTURES / DEED REMOVAL

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1. BACKGROUND

This firm was instructed by _____ the owner of erf 397, Kenridge, to handle the application to the City of Cape Town for the permanent building line departure to allow the proposed new garage to have a street façade wider than 6.5m and on a 0m street boundary setback, the Consent required to relax the development restriction contained in deed condition B(18)(d). The Power of Attorney is attached as **Addendum 1**.

2. PURPOSE

It is the purpose of this memorandum to apply for the following:

- a **Permanent Departure** to allow the proposed new garage to exceed a street façade width of 6.5m, in terms of Section 42(b) of the City of Cape Town Municipal Planning By-law of 2015.
- a **Permanent Departure** to allow the proposed new garage on a 0m street boundary setback, in lieu of the regulatory 3.5m, in terms of Section 42(b) of the City of Cape Town Municipal Planning By-law of 2015.
- **Removal** of restrictive title deed condition **B(18)(d)** in terms of Section 42(g) of the CoCT Municipal Planning By-law of 2025 to allow a double garage within the 4.72m deed street boundary building restriction & 1.57m common boundary building restriction.
- **Removal** of privately imposed condition **C(1)(iv)** by Ruyteplaats Estates Pty. Ltd. which prohibits the construction of a new garage / outbuilding, in terms of Section 42(g) of the CoCT Municipal Planning By-law of 2025 to allow the proposed double garage.
- Application in terms of Section 42(j) of the CoCT Municipal Planning By-law of 2025 for the amendment of previously approved conditions which were imposed with the establishment of the Kenridge Township (General Plan 839).

3. PROPERTY & TITLE DEED DETAILS

Registered Erf 397

SIZE:	991m ²
OWNER:	
TITLE DEED NO:	

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BORDERS:	
NORTH	Erf 396
SOUTH	Erf 398
EAST	Van der Stel way & Remainder erf 863 (Open Space)
WEST	Erf 399 & 400
T-DEED RESTRICTIONS:	Yes, removal of condition B.18(d) required
GENERAL PLAN NO:	GP 839
ZONING:	Residential zone 1 (Conventional housing)

The title deed and General Plan area attached as **Annexure 2 & 3** respectively. The bond on the property has been settled as per the bondholder confirmation attached as **Addendum 4**.

4. LOCATION

Erf 397, here after called the **property** is located at no. 3 Van der Stel way in the suburb of Kenridge in the Durbanville allotment of the Northern suburbs of the City of Cape Town Metropole (See **Figure 1** below). The locality plan is attached as **Plan 1**.

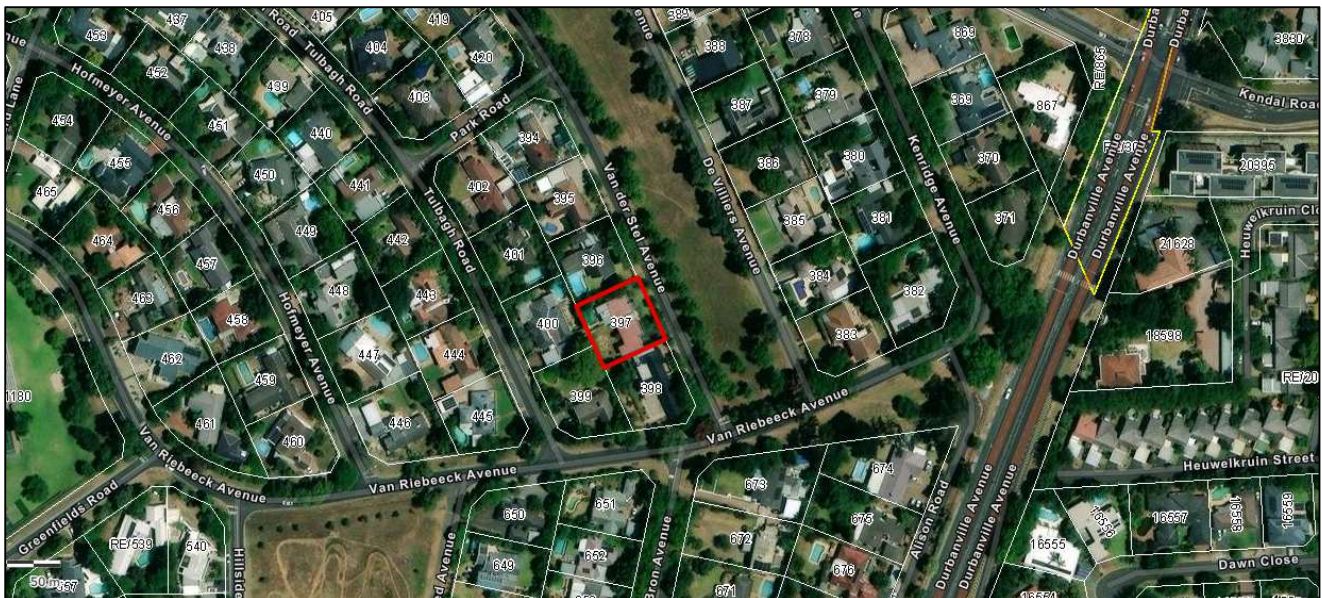


Figure 1: Local context

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5. RESTRICTIONS

Legislative restrictions:

Title deed:

The following deed conditions are considered restrictive in terms of the addition of the proposed new double garage;

Condition B.18(d)

"no building or Structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 15feet to the street line which forms a boundary of this erf, nor within 10feet of the rear or 5 feet of the lateral boundary common to any adjoining erf provided that with the consent of the local authority an outbuilding not exceeding 10feet in height measured from the floor to the wall plate and no portion of which will be used for human habitation may be erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf. This condition shall not however, apply to the existing buildings on erven No's 404, 408 and 416 until such time as they are altered or demolished."

The above condition restricts the proposed new double garage as per **Plan 3** and as such a complete removal is required to enable the approval of the addition on a 0m street and common boundary building line. See the conveyance's certificate confirmation attached as **Addendum 5**.

Privately imposed condition C(1)(iv)

(iv) No dwelling house, outbuildings or other structures whether temporary or permanent shall after the date of possession be erected, and no additions or alterations shall be made to any building or other structure erected or to be erected and no road shall be laid down or commences to be laid down, on the said lot save in accordance with plans which have been duly approved in writing by the Company and such approval may be refused or granted subject to such conditions as the Company may deem it advisable to impose.

The necessary communication was started and lines opened to obtain the consent from Ruyteplaats Estates Pty. Ltd. As per the email record attached as per **Addendum 6**. The representative Mr Louis van Rensburg indicated that the owner's will be required to meet with the relevant remaining members of Ruyteplaats and that there will be costs involved which this firm deems unfair and unnecessary. It is clear that extensive effort was made to communicate and resolve with the request seemingly now seen as an opportunity for

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financial gain. As such the City is requested to engage with the company by means of the public participation process to ensure transparent decision making.

Physical restrictions:

No physical restrictions exist that will need to be mitigated to allow the proposed double garage. No established or mature trees will be removed to accommodate the proposed new double garage.

Built restrictions:

The property is used in accordance with the Residential 1 zoning and the 2024 approved building plan attached as **Plan 2**, as a residential dwelling with residential features associated with this use including the existing garage fixed to the main dwelling along the southern boundary. There are no loose standing outbuildings on the property and the proposed new double garage will also be connected to the existing dwelling with access to the house.

The following use restrictions apply to garages & carports in this zoning:

(iii) For land units exceeding 650 up to 1000 m², a garage or carport **shall not be closer than 3,5 m from the street boundary**, notwithstanding the street building line.

(i) A garage, carport and outbuildings are permitted within the common boundary building line or on the common property boundary provided that the garage, carport and outbuilding do not:

(aa) extend higher than 3,5 m from existing ground level to top of building; and

(cc) **exceed a horizontal dimension of 6,5 m** when viewed from any street boundary.

The proposed double garage is on a 0m street setback and the horizontal dimension is 6.8m hence the requirement for a street & common boundary regulatory building line departure.

6. REQUIRED CONSULTATION

Required pre- submission consultation was undertaken by means of email communication with Mrs Elmari Marias as per the record attached as **Addendum 7**.

7. NEW DEVELOPMENT PROPOSAL:

This application is there for presented to the City of Cape Town for the addition of a new double garage of ±47m² in accordance with **Figure 2 (Plan 3)** below.

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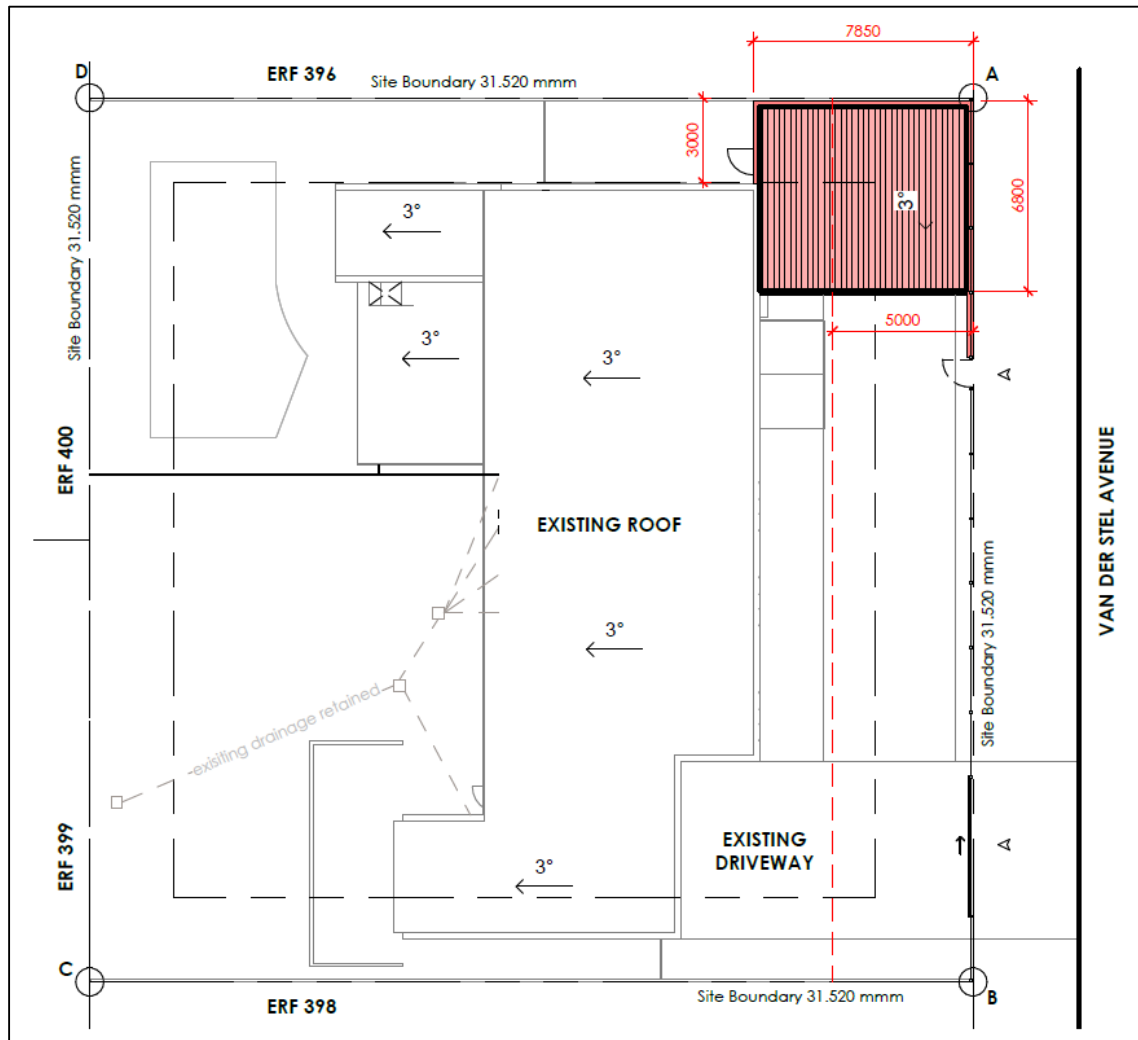


Figure 2: Proposed new double garage on erf 397

7a. DEVELOPMENT SCHEME PARAMETERS:

The following development scheme parameters are applicable to properties with a Residential 1 zoning (>650 up to 1 000);

If the development proposal conforms it will be **Yes** or **No** if any departures are required.

Maximum Floor space:

1500m²

Yes

292.84m²

Height:

10m to top of roof

Yes

As- built & approved

3,5 m from existing ground level to top of building
for garage

Yes

3.5m

Building lines:

External street building line

No

For land units exceeding 650 up to 1000 m²,

0m

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a garage or carport shall not
be closer than 3,5 m from the street boundary,

Common boundary building lines

3m

New garage:

horizontal dimension of 6,5 m

Parking:

2 bays

Yes

Dwelling as- built & approved

No

6.8m

Yes

Existing garage + new double
garage

7b. PERMANENT DEPARTURES

Departure from the regulatory horizontal dimension of 6.5m to 6.8m for the new double garage façade facing the street

The encroachment can be mitigated by the following supporting factors;

- The garage is not inhabited space.
- The garage has no window openings overlooking the street.
- The distance of 0.3m (30cm) in excess of the 6.5m is minimal.
- The extra length will accommodate a boat or trailer.
- The excess will not be visible to the eye.
- It will not impact on pedestrian movement or vehicle safety along Van der Stel way.

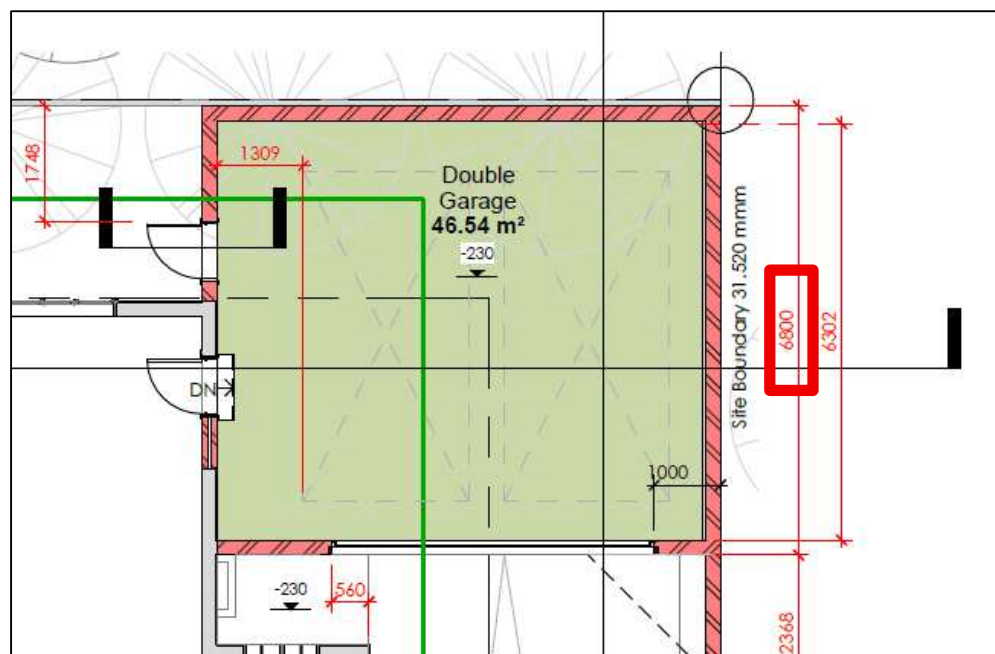


Figure 3: Departure from 6.5m horizontal width to 6.8m

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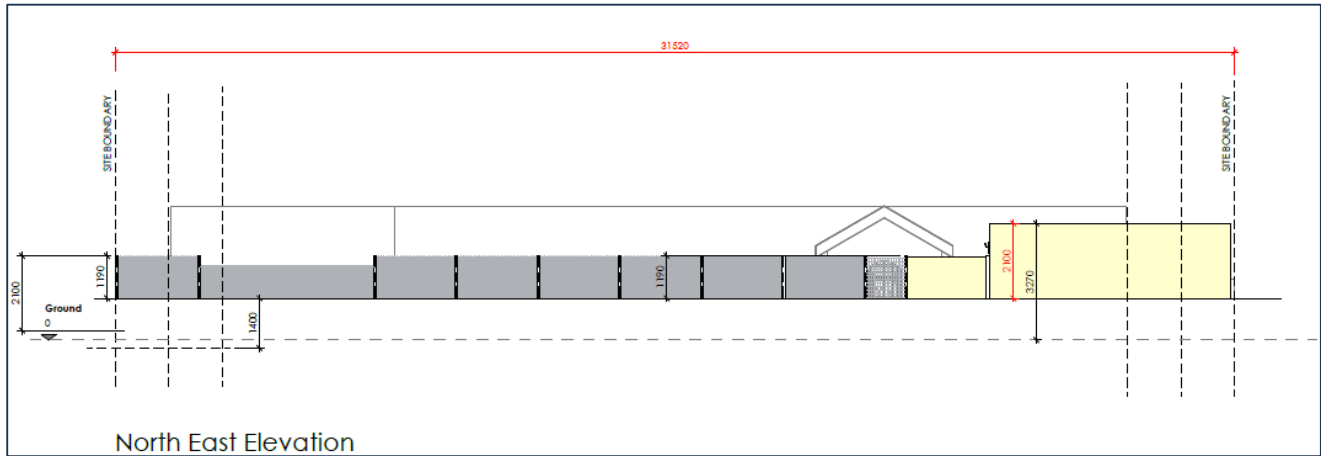


Figure 4: North East elevation indicating the height of the new garage as only 2.1m above the street level which negates most of the visual penetration or massing onto the street / public realm

Permanent departure to allow the new double garage on a 0m street boundary setback in lieu of the regulatory 3.5m;

The encroachment can be mitigated by the following supporting factors;

- It will not be out of character in the area i.e. precedent has been set (see **Figures 5 & 6** below).
- It will not pose any impact on privacy due to no windows overlooking the yard of erf 396.
- The dwelling on erf 396 is at a distance of $\pm 7\text{m}$ from the new garage.
- It allows a cost-effective building addition.
- It will not impact on pedestrian movement or vehicle safety along Van der Stel way due to the difference in levels as indicated on **Figure 9** below.
- It does not impact any services in or outside the erf along the street boundary.



Figure 5: Similar situation of addition / extension at no. 32 Tulbach road hence no precedent is created.

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Figure 6: Similar situation with double shade port at no. 25 Tulbach road



Figure 7: Due to difference in height between the street level and the dwelling (including the new garage) the blank garage façade will not be as imposing due to it being lower ($\pm 1.4\text{m}$) than the van der Stel street level

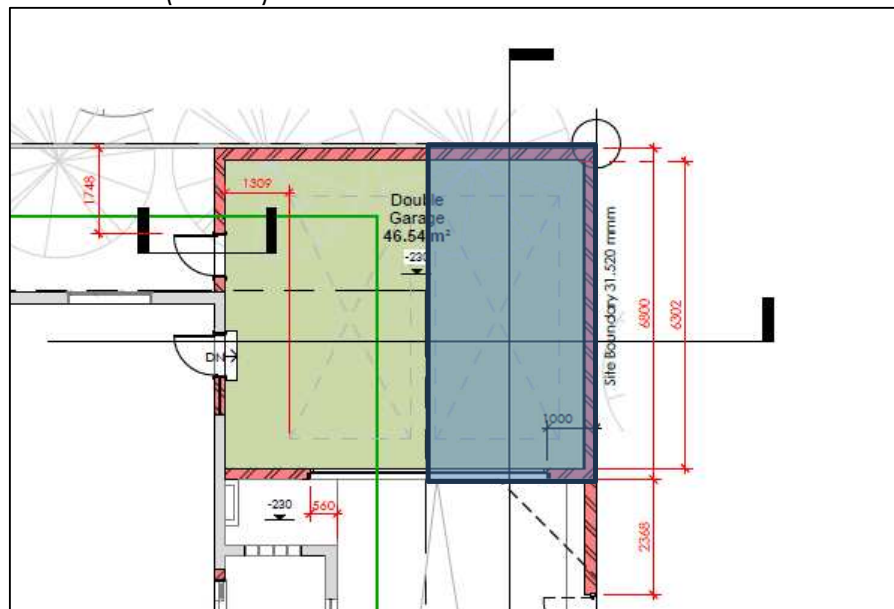


Figure 8: Departure area on 0m setback in lieu of the regulatory 3.5m

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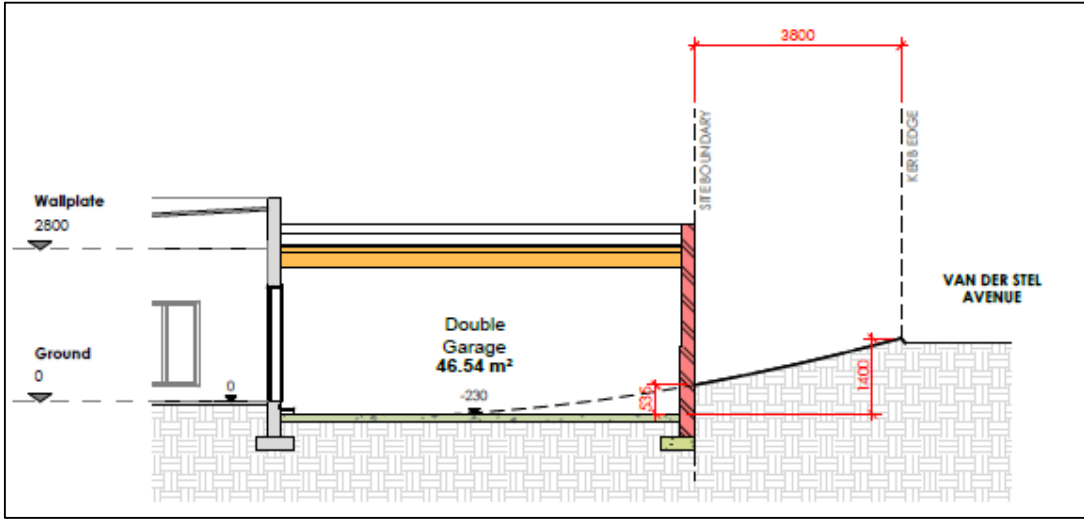


Figure 9: Section B-B indicating the level difference supporting the double garage in terms of impact on the streetscape

7c. REMOVAL OF RESTRICTIVE CONDITIONS B.18(d)

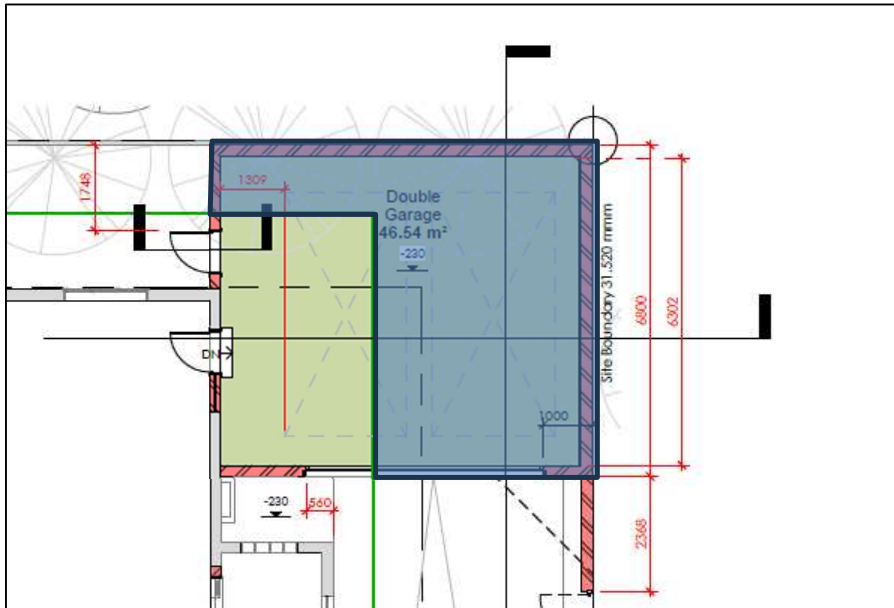


Figure 10: Removal of restriction B.18(d) to allow the new double garage on a 0m street & side setback in lieu of the respective deed stipulated 4.72m & 1.57m

As mentioned under Section 5 above a removal of deed condition **B.18(d)** is required to construct a new double garage on 0m street and side boundary setbacks. Despite the fact that these conditions relate to use and development management a consent to relax cannot be considered based on the fact that the restriction will then be imposed on future owners of this property should it change ownership. The removal will ensure future beneficiaries also enjoy the benefit.

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The Removal of restrictive condition B.18(d) will be subject to the principles of SPLUMA and LUPA.

Section 47 of SPLUMA states that the relaxation / removal of a restrictive title deed condition must be affected “with due regard to the respective rights of all those affected, and to the public interest; and in the prescribed manner”.

This firm is of the opinion that the removal of deed condition B.18(d) will not negatively affect the rights of any surrounding land owners as it is in its simplicity a standard practice to construct a garage on a 0m setback where such an addition does not pose an impact on surrounding neighbours in terms of privacy and security or any other personal rights. This is a common occurrence and the rights of the affected parties or surrounding land owners are still protected by means of the building plan approval process which is required to follow this LUM application. This process and the associated internal circulation and required extensive public notification will still mean that the interest of the public is protected by legislation in terms of the building regulations and the submission and approval of a building plan in the prescribed manner. As such the opinion is held that the principles of SPLUMA are not negatively affected by this application.

Section 39(5) of LUPA requires that regard be had to at least the following aspects:

i. Financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity.

The relevant conditions were imposed by the Administrator in terms of Ordinance 33 of 1934 when approving of the establishment of the Kenridge Township now located in Sub-district 1 of the Northern District. These conditions are in favour of the now relevant Local Authority being City of Cape Town which has the delegated authority to assess the relevance and applicability of these historic development conditions. The Northern District office of the CoCT is therefore the entity enjoying the right provided for in the abovementioned restrictive conditions, which rights have no financial or other benefits to the Municipality seeing as it is now in private ownership. These conditions were originally imposed for the purpose of development control, prior to the implementation of zoning schemes. It is, however, generally acknowledged that development control by means of title deed conditions is outdated and that the current Development Management Scheme being the Municipal Planning By-law of 2025 is the most appropriate development management mechanism. The applicable By-law there for allows the opportunity to apply for removal to relax archaic development related restrictions.

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ii. The personal benefits which accrue to the holder of the rights in terms of the restrictive conditions.

There are no personal benefits to the City who is the holder of the right. The Municipality can manage development by means of the Development Management Scheme.

iii. The personal benefits which will accrue to the person seeking the removal,

Removal of the relevant condition will benefit the owner of the property who will be in a position to develop said property in accordance with the land use rights afforded to him by the By-law. It should be noted that the removal of condition B.18(d) allows the new double garage on a 0m setback which represents a positive socio-economic impact due to the fact that it allows for value adding (additional storage & parking space) to an existing property with an approved building plan. It will therefore be in the public interest to approve the application based on the fact that it will also afford surrounding land owners the same opportunity for viable addition of garage space (precedent has been set). It will further contribute to the maximization of land owner's personal asset without negatively affecting the rights of surrounding land owners or their assets in terms of value.

iv. The social benefit of the restrictive condition remaining in place in its existing form.

There would be no social benefit should the relevant condition remain in place. There will however be added benefit as the removal will provide a value adding benefit for the owner as well as creating opportunities for similar additions and extensions in the area by fully utilizing buildings & land to increase value.

v. The social benefit of the removal of the restrictive condition.

Removal of the condition will permit an extension to the building footprint and the addition of a new double garage in accordance with the allowance of the Development Management Scheme or MPBL which were formulated in consultation with the public through a public participation process. The proposed addition / extension is therefore considered to be in the public interest where the public acted as an interested and affected party in the formalization of the legislation.

vi. Whether the removal of the restrictive condition will completely remove all the rights enjoyed by the beneficiary or only some of those rights.

The condition to be removed is considered restrictive with regards to the optimal development of erf 397 in terms of the opportunity to extend the footprint by adding a new double garage. The benefit of this removal will still be assessed in terms of the guidelines, parameters and rights allowed for in terms of the Development Scheme.

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Based on the above it can be concluded that the benefits of removing condition **B.18(d)** outweighs the benefits of retaining the condition.

Privately imposed condition C(1)(iv)

(iv) No dwelling house, outbuildings or other structures whether temporary or permanent shall after the date of possession be erected, and no additions or alterations shall be made to any building or other structure erected or to be erected and no road shall be laid down or commences to be laid down, on the said lot save in accordance with plans which have been duly approved in writing by the Company and such approval may be refused or granted subject to such conditions as the Company may deem it advisable to impose.

The decision to include the removal of this privately imposed condition is based on the fact that the remaining members of this company not being able to provide the consent without personally meeting with my client which in this firm's opinion is not necessary and also to be noted is that any financial claims for the removal is deemed unfair and irregular based on the fact that many properties in the same township have successfully managed to add or extend. To be fair the remaining members of this company should consider de-registering the company to prevent the same delays and unnecessary complication of procedures in future.

7d. SERVICES

The requested departures and removal of one condition will not impact negatively on or cover any existing services. The proposed new garage addition does not require any additional service connections nor does it pose an increased impact on capacity in the area.

7e. ACCESS / PARKING

The proposal will not affect the existing access carriageway crossing to the house nor will it affect the existing double garage's functionality to deliver parking. It will also not involve the creation of a second carriage way crossing and the new double garage is accessible via a new drive way as indicated on **Plan 3**.

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7f. VIABILITY

The proposed application is deemed viable due to the following factors:

- It creates opportunity for additions and extension to an existing structure.
- It provides increased asset value.
- It ensures the land size is optimally utilized.
- It does not provide any additional hazards i.e. fire due to the fact that the addition is not an inhabited area. The necessary fire doors between the garage and the existing house will be installed to the satisfaction of the City of Cape Town.
- No additional noise / privacy impacts are created due to the fact that the addition contains no windows and is not inhabited.
- It provides a long-term space solution for the client in terms of boat, bike & trailer parking.
- It is a cost-effective solution for my client due to the level difference between the road level and his property level i.e. the new garage is lower than the road but accessible from the front of the property without the considerations of water logging and run off into the dwelling.

7g. SUSTAINABILITY

The proposal is considered sustainable due to the following supporting factors:

- It will not negatively influence the value of any of the properties in the area.
- It will not adversely affect traffic / pedestrian movement or any infrastructure elements.
- It will not have any environmental impact.
- It will ensure a viable residential extension opportunity.
- It is a long term and permanent addition which will oppose the degradation effects of any temporary structures / shade ports with unsightly outcomes.
- It provides opportunity for additional property tax for the City due to the increase in floor space and value.

7h. DESIRABILITY in terms of SECTION 99(3) of the THE MUNICIPAL BY- LAW (2025)

The following criteria are deemed as desirability factors supporting the proposal for extension and the required LUM applications;

*(motivation in support in **bolded** italics)*

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- Socio- economic impact;

No negative economic impact exists. The approval will allow my client to have the rights to extend / add to an existing residential unit which enables the property to be used optimally with no increase in coverage and safe parking space. It provides the opportunity for an increase in asset value. It therefore has an economic advantage for my client as well as any future investor seeking additional storage space.

The social impact is deemed positive due to the fact that it ensures addition of storage / parking space with no negative impact due to the street level and distance from erf 397.

- compatibility with surrounding uses;

It is still compatible in terms of the use as a residential dwelling as it was before this application due to the fact that the use is in accordance with the definition of a single dwelling and the allowances of the Residential 1 zoning as per the DMS. The departures and removal of conditions will not negatively affect this compatibility.

- impact on the external engineering services;

None

- impact on safety, health and wellbeing of the surrounding community;

Adequate fire prevention precautions will be implemented in accordance with any conditions set by the City in terms of the building plan approval. The use of the addition is restricted to parking / storage with habitation. It will also increase movement and surveillance along the van der Stel street boundary which will also benefit the neighbour on erf 396 due to the removal of any space for criminals to hide and a blank wall creating a safer buffer than a permeable fence.

- impact on heritage;

No impact exists.

- impact on the biophysical environment;

None, no natural areas are being affected and the existing dwelling is in a built area where building extensions are common due to the size of the erven.

- traffic impacts, parking, access and other transport related considerations;

No impact exists as the status quo is maintained in terms of access and the proposal provides viable additional parking space.

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- whether the imposition of conditions can mitigate an adverse impact of the proposed land use;

The previously imposed conditions which accompanied the establishment of the Kenridge Township is outdated and were replaced by the Development Scheme i.e. the Municipal Planning Bylaw to govern sustainable land use. Removal of these conditions will ensure alignment with current development trends and viable land use implementation.

This application will be properly assessed and circulated to the relevant departments for comment as is required by the DMS and any conditions imposed will be the outcome of a comprehensive land use process. Acceptance of these conditions will nullify adverse impact and ensure procedural compliance.

8. CONCLUSION

This application for extension of / or addition to the existing building is deemed viable with zero negative impact on the surrounding land owners. It has the purpose of achieving maximum asset value and increased safe parking and storage space to ensure sustainable protection of my client's assets i.e. vehicles, tools and stored items.

It is therefore encouraged and recommended for approval.